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May 7, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte in CC Docket No. 98-121

Dear Ms. Salas:

Cox Communications, Inc., by its counsel, hereby files a written *ex parte* in response to general recent Bell South *ex partes* on applicable performance standards and penalities.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and two copies of this letter are being submitted to the Secretary's office. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,

Laura Phillips

Laura H. Phillips
Counsel for Cox Communications, Inc.

LHP/css

cc: Jake Jennings
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte in CC Docket No. 98-121

Dear Mr. Strickling:

Cox Communications, Inc. ("Cox"), by its attorneys, hereby files these comments addressing the service quality performance measurements and penalty proposal that BellSouth Telecommunications, Inc. (BST) discussed in an *ex parte* meeting with members of your staff on April 9, 1999. It is Cox's understanding, based on the presentation BST made at an industry workshop on the same subject in Louisiana on April 28, 1999, that this proposal was made as a response to the FCC's "Louisiana II" Order, as well as to a letter from you to Sid Boren dated February 10, 1999.

Generally, Cox believes that a self-effectuating penalty structure is appropriate. *If properly structured*, it can provide an incentive to the incumbent local exchange company ("ILEC") to provide reliable performance, will be automatic (meaning little action must be taken by the competitive local carrier ("CLEC") to activate the penalty process), and will minimize any delay in reimbursing CLECs whose businesses are harmed by BST's inadequate performance.

BST's proposal, however, falls far short of being a properly structured penalty mechanism. As discussed below, because of its numerous averaging proposals (statewide data on most measures, monthly data on trunk blockage, etc.), its limitation on measures subject to penalty, and the insignificant level of the penalty paid, BST's proposal does not appropriately take account of the impact that BST's poor performance has had and will have on a CLEC's ability to provide competitive services to its end users.

1. **To attract and retain customers, CLECs must provide a higher level of problem-free service than ILECs.**

The service quality of CLECs is under tremendous scrutiny by end user customers. Until local exchange competition becomes established — and even after, customers (and potential customers) are and will be sensitive to CLEC performance issues. Customers can perceive minor performance glitches as major issues or the start of what could be seriously degraded service. Quality dissatisfaction by even a few CLEC customers can have a significant impact on a CLEC's marketing efforts.

Even a fully facilities-based CLEC's reputation may be affected by the behavior of the ILEC, since their networks are interconnected. For example, if the ILEC does not have sufficient trunking facilities connected to the CLEC's switch, the ILEC's customers cannot call the CLEC's customers. Even though it is not the CLEC's responsibility or within its power to correct unilaterally, the problem is perceived as being caused by the CLEC. At this point in the development of the market, CLECs are and must be sensitive to every aspect of service performance problems. CLECs must offer *excellent* performance to keep customers they are able to win, and to attract new customers.

2. **Poor ILEC service has a disproportionately adverse impact on CLECs.**

ILECs have some hundred odd years of history of providing ubiquitous monopoly service and can provide inferior service to customers on occasion without adverse consequences. When ILECs provide a degraded level of service to their customers, their customers today do not typically leave them for another service provider. They may be dissatisfied, but most customers simply do not yet believe they actually can procure service from another provider.

This is not the case for customers of new market entrants. CLECs, no matter how they offer service to their customers--via their own facilities, over unbundled network elements or through resale--are highly dependent on ILECs for the quality of service they are able to offer their customers. As a result, poor service received from the ILEC has a significantly greater effect on a CLEC's business than that same poor service does on the ILEC itself. Inferior service at "parity" will force new market entrants out of the market.

3. **BST's definition of "parity" is too narrowly focused.**

The FCC's "Louisiana II" Order states that for UNE ordering, a way of measuring nondiscriminatory treatment is providing efficient CLECs *a meaningful opportunity to compete.* This parity concept encompasses at least two components: (1) a similar level of service; and (2) a reasonable minimum standard of service. BST's proposal defines "parity" very narrowly, as "roughly equal." However, defining parity in this manner fails to recognize the impact of poor service on the CLECs' ability to compete, as noted above.

Any definition of parity must recognize the differential impact that poor performance (for resale, interconnection, transport and UNEs) by BST has on a CLEC's ability to compete. This concern further highlights the importance of including some minimum level of performance.

A good place to look for this minimum level of performance may be in state service standards. For example, the Florida Public Service Commission Rules have minimum service standards for such relevant measures as trunk blockage, missed appointments, etc. Where no minimum performance standards exist, minimum standards need to be established and included as part of the parity determination process. It also may be appropriate, for example, to adopt and apply federal performance standards. The FCC currently has proposed performance standards under review and if they are updated, adopted and enforced, these standards can serve as a good barometer of ILEC behavior.

4. For CLECs to provide equivalent service to their end user customers, any measures of ILEC parity must recognize that ILEC-provided functions represent only a portion of the provisioning process.

The provision of end-to-end service to an end user customer is composed of multiple, discrete steps. Some steps are performed by the CLEC and others may be provided by the ILEC. Once the CLEC purchases services or network functions from the ILEC, it must then add its own operational and network functions to provide complete service to its end user customers. For example, a facilities-based provider, such as Cox, may on occasion need to purchase unbundled loops to be able to serve a customer who is beyond the reach of its network. This situation typically occurs for a multi-location customer. Cox must add connections to its switching facilities, perform customer-specific translations and service features within the switch, prepare a customer service record entry and perform other functions before the service can be activated for the customer. In addition, for multi-location customers, the process of coordinating the unbundled loop location with the installation at other locations must also take place.

BST's proposed use of "retail surrogate" performance measure essentially would provide to CLECs with the same performance (many with the same time interval basis) that is provided to the ILECs users. This is inadequate. BST's performance should be measured at the point in the process where the CLEC and ILEC will be put at "parity." That is, the measurement must occur at the same point in the ILEC process chain where the CLEC will be when it starts completing the process after hand-over by the ILEC. In this manner the ILEC and a CLEC that operates with the same efficiency as the ILEC will be on equal footing in the marketplace.

On occasion, the CLEC-specific functions can run in parallel with the ILEC-provided functions. However, some CLEC functions are interdependent with the ILEC functions, and cannot occur until the ILEC has completed its part. The cumulative nature of these functions must be taken into consideration when considering parity. For example, if the ILEC can provide service to its customers from order to completion in three days the cumulative steps an efficient CLEC must take to provide activated service to the end user can take no more than three days. This means the ILEC must provide the required facilities ordered by the CLEC in less than three days. The ILEC's provisioning component of its total required process should be provided to the CLEC as the ILEC provides to itself.

5. The geographic area of performance comparison for CLEC versus ILEC must be small enough to capture differences that vary by area—most measures should be at the wire center level.

The BST penalty proposal is based on statewide measures. Some measures are even region-wide. This high level of geographic aggregation fails to capture any performance differentials that could affect CLECs. While an ILEC may serve major areas within a state, CLECs, at this early stage of market development, tend to serve more limited parts of a state, typically in the more densely populated areas. Only in some isolated instances, such as where BST has deployed a single operating system for the entire region, will a region-wide figure be appropriate, for instance, a billing system.

Most issues for which service quality performance measures are required affect CLECs on a local basis and should be compared to ILEC performance at the wire center level. This is where the loops, switching, and other UNEs used by CLECs are provisioned by the ILECs. To measure service quality across aggregations of wire centers allows some service deficiencies to be lost in the averaging process.

6. The measures subject to penalties must cover all parts of the process, from ordering to completion.

The nine actual standards proposed by BST, while appropriate, do not adequately cover the major areas that impact the CLECs' provisioning of service to their end user customers. BST's nine measures are, according to BST, designed to be "outcome based measures that reflect the actual experience of the end user." However, just as the time frames BST has presented only measure performance at the BST end user level, the measures subject to penalty do not take into account the entire process needed to provide service to CLEC end users.

Because many CLEC functions (such as number porting) are time dependent, deadlines during the ordering process are critical. A disruption in those early processes affects a CLEC's ability to fulfill its obligation to its customers. Thus, in addition to Installation Timeliness and OSS Percent Availability, measures of the ordering process itself should be included.

For example, Firm Order Confirmation Timeliness compares how quickly the Firm Order Confirmation is returned to the CLEC. This measure is not reflected in Installation Timeliness or in OSS Percent Availability. Yet a delay in the return of a Firm Order Confirmation affects the CLEC's ability to give a commitment date to its customers. Nor is there any penalty proposal for Jeopardy Orders, which also have an impact on the CLEC's ability to meet the due dates it provides its customers. This ties into the internal processes a CLEC must add to any functions it provides. Because the CLEC's internal processes are tied to the due dates of the ILEC functions, any disruption in the ILEC functions has a negative effect on the CLEC's ability to meet its commitments. This counsels for including missing portions of the ordering process within the performance measurement.

7. The comparison parameters for measurement must be specific enough (on geographic area, completeness of measures and measurement period) to actually reflect the experience of a CLEC and its customers.

BST's proposal compares performance for a limited number of measures on no greater frequency than an average monthly statewide basis and does not measure the experience of CLECs and their customers versus BST and its customers. These proposed penalty measures do not reach a sufficient level of granularity, and have the potential of allowing BST to gerrymander its performance in areas where there is no local competition in a manner that offsets the areas in which there is local competition.

One example of this is trunk blockage. When trunks are blocked, for the reasons noted above, the CLEC is perceived to have inferior service. Any period in which trunks are blocked, particularly at the busy hour, has a negative impact on the perceptions of CLEC service quality by both CLEC customers and ILEC customers (who are also potential CLEC customers). BST proposes to measure trunk blockage differences between itself and CLECs by looking hour by hour at the blockage rate, averaged across the entire month for all final trunks. For the measure to be counted, there must be a miss for more than two hours in the month with a greater than 0.5 percentage points difference between BST's performance for itself and its performance for the CLEC. The 0.5% difference results in a performance measurement that doubles the allowed blocking of CLEC involved calls. This level of aggregation and averaging does not adequately reflect the impact on the CLEC or its customers.

8. Misunderstanding of CLEC orders can be inappropriately classified by the ILECS as CLEC errors.

There are many points in the ordering and provisioning processes where "CLEC errors" shut down the forward progress of fulfilling an order. It has been Cox's experience that many "CLEC errors" are not errors at all, but are often the result of inadequately trained BST staff, operating within a system that invites the opportunity to "pass the buck" when problems occur. Too frequently, orders will stop progressing forward, and a CLEC is not timely notified, because of a misunderstanding or misinterpretation by the responsible BST staff. Automated systems, with equivalent edits to those BellSouth provides to itself, and timely notification of fatal errors, will help minimize such problems, but those systems are not in place today. As indicated by the FCC staff in its February 10, 1999 letter to Sid Boren, a better definition of what constitutes a CLEC error must be developed, with some measure, such as a third party audit, to verify correctness.

9. Penalties should be structured to encourage the immediate correction and continuing sufficient performance of the ILEC.

BST's April 8 *ex parte* to the FCC contains the following statement: "The penalties are structured to provide no incentive for the CLEC community to prefer the remedy over quality service." CLECs, of course, are in the telecommunications business and are interested in obtaining and retaining customers. CLECs are not in the "penalty" business. The only way CLECs can obtain customers is by providing high quality, innovative and responsive service and for this they must, at least in part, rely on BST. BST's payment of significant financial penalties cannot compensate the CLEC for the loss of customers to ILECs as a result of poor or discriminatory service by BST. Any suggestion that CLECs are gaming ILEC performance standards is absurd.

Cox's greater concern is that the penalties are not set high enough to provide an incentive for BST, on a continuing basis, to perform sufficiently. BST's proposal ties penalty compensation to an individual CLEC to the charges the CLEC paid for the service it did not receive. However, not charging CLECs for inferior, late or missing service is not a penalty to BST. It merely is a prod to BST to obey the law and is simply good business practice. In fact, it is no more than the standard remedy under many ILEC tariffs. To provide a real incentive, any penalty must be significant, it must affect BST's bottom line, it must be routinely enforced and paid promptly.

10. Service quality performance standards must be fully operational. There should be no two months in a row in any three months of missed parity or minimum performance for all measures *before* BST receives Section 271 authority.

BST's proposal indicates it will implement its penalty proposal *only* after it receives Section 271 authority. In addition to holding the concept of penalties hostage to the Section 271 process, this approach does not accomplish the entire purpose of a penalty proposal — to ensure no backsliding after Section 271 authority is granted. Underlying the penalty proposal is the assumption of adequate performance by BST. Prior to the grant of Section 271 authority, however, BST must demonstrate its commitment to opening the local market by providing sufficient and adequate service. A reasonable requirement for BST to meet prior to gaining Section 271 authority would be that there should be no two months in a row during any three month period that BST fails to meet relevant performance standards — for all measures, not just the ones which are subject to penalties.

11. The grant of Section 271 authority to BST is premised on the existence of significant and irreversible competition, not just on meeting the checklist items. Service quality performance standards are part, but not all of this determination.

The determination of sustained performance of service quality performance standards is but one aspect of the grant of Section 271 authority. While setting up service standards with appropriate penalties will help fulfill the Section 271 checklist requirements, the real issue centers on whether there is sufficient sustainable competition in the local market. The Commission should take care that the BST penalty proposal is not given more weight than it deserves in the Section 271 approval process.

In summary, Cox believes that BST's penalty proposal falls short in several significant areas:

- geographic area measured
- completeness of measures subject to penalty
- appropriateness of measurement
- completeness of the definition of "parity"
- consideration of the additional time needed to add CLEC functions to BST functions necessary to provide service to an end user
- timing of the grant of Section 271 authority versus adoption of the penalty proposal.

Cox appreciates the opportunity to provide the Commission with its perspective as a facilities-based local service provider on BST's proposed performance standards and penalty measurements. Cox stands ready to assist the Commission as it analyzes these proposals and their impact on the development of sustainable local exchange competition.

Respectfully submitted,

Laura Phillips

Laura H. Phillips
Counsel for Cox Communications, Inc.